

# CHAPTER 7—FEDERAL AVIATION ADMINISTRATION ROLE IN ARAC

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## PURPOSE

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This chapter provides Federal Aviation Administration (FAA) employees who participate in the Aviation Rulemaking Advisory Committee (ARAC) process with specific information on the FAA's role in ARAC.

## FAA PERSONNEL PARTICIPATING IN ARAC

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### ARAC positions

FAA personnel hold the following positions in ARAC:

- Executive director (Executive Committee),
- Assistant executive director (issues area), and
- FAA representative (working group).

In addition, FAA personnel participate on the FAA internal team.

### FAA representative

The FAA representative should be from the FAA office that requested the subject matter be addressed (the office of primary responsibility).

An FAA representative must not—

- Commit the FAA to a specific course of action. There is further management review of the recommendation document after it is submitted to the FAA.
- Stop or veto a working group activity. The FAA representative does not have the authority to act on behalf of the FAA.

### Internal team

An internal team is made up of FAA employees selected to support the FAA representative. An internal team is established for each working group.

An internal team includes—

- An attorney,
- An economist,
- An Office of Rulemaking transportation industry analyst or a directorate technical writer/editor, and
- Other subject matter experts.

## RESPONSIBILITIES OF FAA PERSONNEL PARTICIPATING IN ARAC

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### Executive director

The executive director's responsibilities are as follows:

- Serves as the focal point for all communications between the FAA and ARAC and its Executive Committee.
- Supervises ARAC's affairs to ensure conformity with established procedures.
- Acts as the designated Federal official required by section 10(e) of the Federal Advisory Committee Act (FACA).
- Attends each full committee and Executive Committee meeting.
- Approves each full committee and Executive Committee meeting agenda.
- Adjourns each full committee and Executive Committee meeting when he or she deems it to be in the public interest.
- Establishes FAA guidance and policies pertaining to ARAC, including membership and procedural guidelines.
- Provides day-to-day oversight of ARAC activities.
- Provides legal and economic support of an attorney and an economist, respectively, when requested by an assistant chair and/or assistant executive director.
- Manages the ARAC finances in accordance with the approved Department of Transportation ceiling, which includes supervising the preparation of the annual budget and periodic reports of its affairs.
- Determines the need to renew and prepares the ARAC charter.

### **Assistant executive director**

The assistant executive director's responsibilities are as follows:

- Serves as the FAA's spokesperson for all activity within his or her issue area.
- Serves as the designated Federal official required by section 10(e) of FACA at meetings in his or her issue area and ensures all applicable FACA requirements are adhered to at all meetings.
- Attends each issue area public meeting.
- Approves each issue area public meeting agenda.
- Adjourns each issue area public meeting when he or she deems it to be in the public interest.
- Ensures each task is properly coordinated within the FAA before it is presented to the issue area.
- Is the focal point for all communications between ARAC and the FAA when an issue in his or her particular area of expertise is addressed.
- Works with the assistant chair to select working group chairs.
- Works with the assistant chair and the working group chair to select working group members and to notify them of their status.
- Appoints, in coordination with the office of primary responsibility, the FAA representative to each working group in his or her issue area.

## Chapter 7—FAA Role in ARAC

### FAA representative

The following table describes the FAA representative's responsibilities:

Responsibilities	
Administrative	Working Group Formation, Work Plan/Concept Paper, and Recommendation Development Phases
<ul style="list-style-type: none"> <li>• Serves as the liaison between the working group and the FAA.</li> <li>• Provides a copy of the working group meeting agenda to the FAA internal team members before the meeting.</li> <li>• Prepares a trip or meeting report after each working group meeting and provides a copy of the report to— <ul style="list-style-type: none"> <li>▪ FAA internal team members;</li> <li>▪ The assistant executive director; and</li> <li>▪ FAA management, as appropriate.</li> </ul> </li> <li>• Invites the assigned attorney and economist to ARAC meetings at which the working group briefs ARAC issue area on its work plan and concept paper.</li> <li>• Ensures the FAA's technical-level interest/concerns and FAA positions are made known to the working group. This includes coordinating with FAA organizations when the working group is making its technical decisions to gain their input early in the development process.</li> <li>• Serves as the leader of the internal team responsible for the task assigned to the working group.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides the working group with all relevant background material, including unresolved petitions for rulemaking, exemption, interpretations, etc.</li> <li>• Participates as a full member of the working group on any issue for which consensus must be reached.</li> <li>• Ensures that if the FAA representative holds a dissenting position, his or her position is accurately presented to ARAC through the assistant executive director.</li> <li>• Meets with the assistant executive director before each working group meeting to discuss the purpose of the meeting and any concerns.</li> <li>• Informs the assistant executive director if the working group chooses to ignore FAA suggestions concerning the format or content of the proposed recommendation document. Works out a resolution with the issue area assistant chair, in consultation with the assistant executive director.</li> <li>• Verifies the accuracy of topics discussed at issue area public meetings with the assistant executive director and follows up on outstanding issues.</li> <li>• Provides copies of all draft recommendation documents to the FAA internal team members when they become available.</li> <li>• Relays concerns raised by the attorney or economist to the working group chair.</li> <li>• Follows up with the assistant executive director on any concerns.</li> <li>• If a harmonization task, coordinates closely with the Joint Aviation Authorities representative on harmonization tasks to ensure harmonization is achieved.</li> <li>• Provides the FAA position to the working group.</li> <li>• Coordinates with directorates and other FAA organizations to gain input early in the development stage.</li> </ul>

## Chapter 7—FAA Role in ARAC

### FAA internal team

The following table describes the FAA internal team’s responsibilities:

Position	Responsibilities	
	To Working Group	To FAA Personnel
Attorney	<ul style="list-style-type: none"> <li>• Attends working group meetings when requested by the FAA representative.</li> <li>• Informs the working group, through the FAA representative, of any opinions, concerns, and objections he or she may have regarding the working group’s activities.</li> <li>• Reviews the working group’s work plan and concept paper before submission to ARAC.</li> <li>• Reviews the regulatory language for the changes being considered before submission to ARAC.</li> <li>• Reviews draft rulemaking documents to determine— <ul style="list-style-type: none"> <li>▪ The legal adequacy of potential FAA action, including the form and legality of the draft document.</li> <li>▪ Whether there is adequate legal authority for the proposed action.</li> <li>▪ Compliance with applicable laws, executive orders, and regulations.</li> <li>▪ Whether the proposed requirements are consistent with other regulations and are enforceable.</li> <li>▪ Whether the document is logically supported and states the justification for the proposal in sufficient detail to permit public comment and withstand judicial review for arbitrary and capricious items.</li> </ul> </li> <li>• Works with the working group to achieve a resolution when invited to a working group meeting to explain any concerns, including legal issues (but do not give legal advice).</li> </ul>	<ul style="list-style-type: none"> <li>• Provides counsel to the FAA representative on the legal pros and cons of options being considered by the working group.</li> <li>• Consults with Office of the Chief Counsel management, as appropriate, to ensure a unified FAA legal position is presented.</li> <li>• Meets with the FAA representative to identify legal concerns that should be addressed in the working group’s recommendation document.</li> <li>• Provides the Office of Rulemaking with a copy of all legal comments and concerns.</li> <li>• If the working group cannot develop a recommendation document that resolves legal concerns, advises the FAA representative that the FAA may not be able to use the working group’s recommendations.</li> </ul>

## Chapter 7—FAA Role in ARAC

### FAA internal team (continued)

Position	Responsibilities
Economist	<ul style="list-style-type: none"><li>• Attends working group meetings when requested by the FAA representative.</li><li>• Keeps the FAA representative to the working group informed of any opinions, concerns, and objections he or she may have regarding the working group's activities.</li><li>• Meets with the FAA representative to identify economic concerns that should be addressed in the working group's recommendation document.</li><li>• Reviews the working group's concept paper before it is submitted to ARAC to ensure economic considerations are included.</li><li>• Provides advice on the economic consequences of alternative actions considered by the working group.</li><li>• Provides the Office of Rulemaking with a copy of all economic comments and concerns.</li><li>• Works with the FAA representative to ensure ARAC supports the working group activity before the FAA provides economic support.</li><li>• Prepares an economic evaluation, if necessary.</li></ul>

## Chapter 7—FAA Role in ARAC

### FAA internal team (continued)

Position	Responsibilities
Office of Rulemaking transportation industry analyst	<ul style="list-style-type: none"> <li>• Prepares all Federal Register announcements of issue area public meetings, assignment of new tasks, and the formation of new working groups.</li> <li>• Attends working group meetings when requested by the FAA representative.</li> <li>• Keeps the FAA representative to the working group informed of any opinions, concerns, and objections he or she may have regarding the working group's activities.</li> <li>• Attends internal team meetings.</li> <li>• Provides drafting assistance to the working group.</li> <li>• Provides group facilitation services to the working group when requested by the working group chair.</li> <li>• Provides information to maintain the ARAC Web site.</li> <li>• Prepares and coordinates statements of work for contractor support, if required.</li> <li>• Attends ARAC issue area public meetings, and prepares and provides for the ARAC Web site and official ARAC file minutes resulting from those meetings.</li> <li>• Provides meeting logistics.</li> <li>• Prepares letters acknowledging receipt of ARAC recommendation documents and stating the FAA's intended action on the recommendation document within 90 days of receipt.</li> <li>• Makes arrangements for and coordinates drafting, legal, and economic support when requested by an assistant chair.</li> <li>• Advises the assistant chair and the working group of delays or changes in the schedules for drafting, legal, or economic support.</li> <li>• Advises the FAA representative of any problems or concerns with the content or format of proposed recommendation documents.</li> <li>• Provides the FACA statement to the assistant executive director.</li> </ul>
Directorate technical writer/editor	<ul style="list-style-type: none"> <li>• Attends working group meetings and ARAC meetings as requested.</li> <li>• Attends internal team meetings.</li> <li>• Keeps the FAA representative to the working group informed of any opinions, concerns, and objections he or she may have regarding the working group's activities and provides advice and recommendations to the FAA representative on document form and content.</li> <li>• Provides technical writing or editing assistance to the working group in the preparation of its recommendation documents.</li> <li>• Provides meeting logistics, as requested.</li> </ul>

## FAA ROLE IN THE ARAC PROCESS

### Overview

The FAA participates in the ARAC process as follows:

Phase	Action
Task phase	Determines a need for ARAC involvement (office of primary responsibility). Prepares the rulemaking project record (office of primary responsibility). Prepares and publishes the Federal Register notice announcing the task and seeking working group members (Office of Rulemaking).
Working group formation phase	Reviews the list of individuals interested in participating in a working group. Assists the assistant chair and working group chair (assistant executive director).
Work plan/concept paper phase	Briefs the working group on the ARAC process (Office of Rulemaking). Briefs the working group on the task and its responsibilities (FAA representative). Discusses working group issues with the internal team (FAA representative). Coordinates the work plan and concept paper with the internal team (FAA representative).
Recommendation development phase	Provides drafting support (Office of Rulemaking). Provides economic support (Office of Aviation Policy and Plans). Provides legal support (Office of the Chief Counsel).
FAA action phase	Acknowledges the recommendation document (Associate Administrator for Regulation and Certification). Processes the recommendation document within the FAA (Office of Rulemaking or office of primary responsibility).

Any FAA office with rulemaking responsibility may request that ARAC undertake a task if that office determines ARAC is the best forum to use. However, an office that does not have an issue area established in ARAC for its specific subject matter should request the creation of a new issue area or work within an established issue area if that issue area can accommodate the new task.



### Task phase

The FAA assigns a task to ARAC using the following steps:

- Step 1.** The FAA determines the need for ARAC’s assistance to solve a specific problem. The FAA office of primary responsibility then prepares a phase I rulemaking project record. The office of primary responsibility uses the rulemaking project record to specify the—
- Task (this should include a detailed description of the issue, background of the issue, outstanding enforcement actions, historical FAA policy, relevant petitions for exemption, and the product (i.e., advisory circular, technical report, etc., and interpretations)),
  - Date ARAC must forward the recommendation document to the FAA,
  - Urgency of the task, and
  - Appropriate ARAC issue area and/or working group that should receive the task.
- Step 2.** The office of primary responsibility submits the completed rulemaking project record to the Rulemaking Management Council for review. The rulemaking project record template is available to FAA personnel electronically in CyberDOCS (No. 15876).
- Step 3.** The Rulemaking Management Council reviews the rulemaking project record and decides whether to assign the task to ARAC.
- Step 4.** If the Rulemaking Management Council agrees to task ARAC, the executive director sends the task electronically to the Executive Committee.
- Step 5.** If the Executive Committee accepts the task, the FAA publishes the task in the Federal Register.

**Note:** ARAC cannot modify the task without prior FAA approval. ARAC may recommend new tasks to the FAA; however, only tasks assigned or approved by the FAA and published in the Federal Register may be undertaken by ARAC.

### Working group formation phase

#### Announcing a Task

The FAA announces the formation of a working group after ARAC has accepted a new or expanded task. The FAA prepares a notice for the Federal Register to—

- Announce the task.
- Announce the formation of a working group and/or seek interested individuals to participate in the working group.

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### **Acknowledging receipt of responses to the notice**

After the FAA receives responses to the public notice announcing the formation of a working group, the assistant executive director—

- Sends copies of the responses to the notice to the assistant chair and the working group chair for their review and consideration.
- Meets with the assistant chair and the working group chair to assist with the selection of the members of the working group. The assistant executive director has the meeting as soon as possible after expiration of the response deadline.
- Responds in writing to all the letters received in response to the public notice, notifying the individuals that they have or have not been selected.
- Forwards an official list of the names and addresses of all the working group members to the assistant chair, the working group chair, and the Office of Rulemaking.

### **Work plan/concept paper phase**

#### **Conducting the initial working group meeting**

At the initial working group meeting, the Office of Rulemaking briefs the—

- Working group chair on the duties, responsibilities, and requirements of his or her position and the working group.
- Working group on ARAC procedures.

The FAA representative briefs the working group on the task assignment. This briefing must include the task assignment from the FAA's perspective and any additional background or information that would be helpful. The FAA representative must also provide the working group with the regulatory history of the task and any related current FAA and/or JAA rulemaking activity.

#### **Developing a work plan and concept paper**

During the development of the work plan, the FAA representative ensures the working group has all relevant background material and coordinates the plan with the internal team members.

During the development of the concept paper, the FAA representative discusses the alternatives with the internal team members to make sure the alternatives are legally and economically sound.

### Recommendation development phase

During the development of the recommendation document, the FAA representative coordinates the document with the internal team members. Any draft documents the FAA representative distributes for review must be marked “DRAFT WORKING MATERIAL—NOT FOR PUBLIC RELEASE.”

After the working group has developed a recommendation document in the form of a proposed rule and presented it to the issue area for approval at a public meeting, the issue area requests economic support. If necessary, the economist develops an economic evaluation (a full discussion of the cost/benefit analysis of a proposed rule).

When the economist prepares an economic evaluation, the FAA representative—

- Provides the working group with a copy of the economic evaluation.
- Takes any concerns or problems back to the economist.
- Resolves any issues.

**Note:** After the working group accepts the economic evaluation, a summary of the evaluation is inserted into the proposed rule preamble.

The attorney begins a legal review of the draft rulemaking when the working group reaches consensus on its recommendation document. This review takes place within the target time period for completion of the task and may vary in light of other ARAC and FAA rulemaking priorities. The FAA must perform a legal review before a rulemaking action can be considered a complete package.

Advisory circulars also require a legal review. The attorney conducts the legal review within the target time period for completion of the task.

### FAA action phase

After the FAA receives a recommendation document from ARAC, the FAA—

- Prepares a letter acknowledging receipt of the recommendation document for signature by the Associate Administrator for Regulation and Certification. This letter also informs ARAC of the FAA’s intended course of action on the recommendation document. The FAA prepares the letter within 90 days of receiving the recommendation document. This letter does not mean the FAA will process the recommendation document as submitted.
- Posts the recommendation document to its Web site at [http://www.faa.gov/avr/arm/arac\\_index.htm](http://www.faa.gov/avr/arm/arac_index.htm) within 2 weeks of receiving the document.
- Processes the recommendation document within the FAA.

## FAA PERSONNEL COMMUNICATION PROTOCOL

### FAA management

Person to Contact	How to Contact That Person
ARAC member	Contact the assistant executive director.
FAA representative	Contact the FAA representative directly. The FAA representative is encouraged to solicit management concerns and opinions on particular subjects. The FAA representative may then advise ARAC using that information.

### FAA representative

Person to Contact	How to Contact That Person
ARAC member	Contact working group members and share expertise when needed to enable the working group to achieve its task. <b>Note:</b> The FAA representative must not make blanket statements about what the FAA will or will not accept. An FAA representative's opinion must not be taken as FAA policy.
Working group chair	Contact the working group chair directly.
Working group co-chair (harmonization working groups)	Contact each working group co-chair directly.
Working group member	Contact a working group member directly.

### FAA internal team member

Person to Contact	How to Contact That Person
ARAC member	Contact the FAA representative. The FAA representative will decide, with concurrence from the internal team member, whether to allow the internal team member to directly approach the ARAC member. <b>Note:</b> If the question is procedural, the ARAC member should contact the FAA representative or the designated Office of Rulemaking transportation industry analyst or directorate technical writer/editor.
Working group chair	Contact the FAA representative.

### RECORDKEEPING

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#### Maintaining ARAC full committee, executive committee, and issue area records

The following ARAC records must be kept—

- Establishing documents;
- Official correspondence relating to committee activities;
- Membership information;
- Agendas;
- Minutes of meetings;
- Invitations;
- Studies, analyses, and draft reports presented to the committee for discussion;
- Final reports submitted in response to the task statement; and
- Records of time served and claims for payment, as appropriate.

The executive director maintains the official records. The records are maintained electronically and in paper form. The FAA encourages assistant chairs to submit recommendation documents to the Office of Rulemaking in electronic form, whenever possible. The records are stored in the Office of Rulemaking and at the following Web site: [http://www.faa.gov/avr/arm/arac\\_index.htm](http://www.faa.gov/avr/arm/arac_index.htm).

#### Making records available

Under the Freedom of Information Act (FOIA), the FAA must make available records upon a request that reasonably describes the records and is made in accordance with published rules, unless the records fall within one of the nine FOIA exemptions. Therefore, any working group information in the custody and control of the FAA is releasable to the public under FOIA unless it falls within one of the nine statutory exemptions, regardless of whether it has been passed on to ARAC.

**Note:** FAA representatives must be aware of the type of information in their possession. For example, if manufacturers share sensitive data with the working group members, the FAA representative may look at and discuss the data during the meeting without the information being subject to a FOIA request. If the FAA representative takes possession of the information upon leaving the meeting and uses the information in performance of his or her duties, then the working group information is releasable under FOIA. If the FAA representative needs data to complete a working group assignment, he or she should make sure the data are in a form or format that would be releasable under FOIA. Proprietary data or data in which the identity of the source is sensitive should be marked out or removed before the FAA representative takes possession of the documents. (See FOIA, section 552 of Title 5 of the United States Code.)

## **REPORTING ARAC ADMINISTRATIVE ACTIVITIES**

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### **Annual Committee Report**

The FAA Office of the Administrator is required by the Department of Transportation to submit an Annual Committee Report. The Office of Rulemaking submits this report.

### **Monthly Expenditure Reports**

The executive director prepares monthly reports of ARAC expenditures under the FAA ceiling and submits them to the FAA Office of Financial Services.